

Internal Revenue Service
Director, Exempt Organizations

Department of the Treasury
P.O. Box 2508 - EP/EO
Cincinnati, OH 45201

Date: FEB 14 2001

Employer Identification Number:
[REDACTED]

Person to Contact - T.D. Number:
[REDACTED]

Contact Telephone Numbers:

Phone
[REDACTED]

FAX
[REDACTED]

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(4) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

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If we do not hear from you within the time specified, this will become our final determination.

Sincerely,

Stan Z Miller

Director, Exempt Organizations

Enclosures: 3

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[REDACTED]

Enclosure I

Information submitted with the organization's application indicates it was incorporated on [REDACTED]. The purposes stated at this time were:

To be and constitute the Association to which reference is made in the Declaration, to perform all obligations and duties of the Association and to exercise all rights and powers of the Association, as specified therein, in the Bylaws and as provided by the owners.

To provide an entity for the furtherance of the interests of the owners within the properties.

From its inception in 1988 until February 2000, the organization's stated purpose was to further the interests of the owners within the properties. The organization amended its Articles of Incorporation [REDACTED]. The amended purposes read:

To be and constitute the Association to which reference is made in declaration, to perform all obligations and duties of the Association and to exercise all rights and powers of the Association as specified therein in the Bylaws and as provided by law.

To provide services to the benefit of the general public in its use of and free access to the area served by our organization.

The organization is a membership organization currently consisting of [REDACTED] businesses within the [REDACTED]. Current members of the organization are [REDACTED]. [REDACTED] also has a provision of [REDACTED] benefits to its members. The organization may also contract with its members for services.

[REDACTED] is the owner of real property within the community center, which is responsible for the maintenance of streets, medians and the fountain plaza located in the urban core of the town center. The development is composed of residential, commercial and office space with streets, sidewalks, parking areas and open spaces. The real property is referred to as the common area of responsibility in the organization's bylaws. The organization provides security, snow removal services, landscaping services, and other maintenance to the area that it owns. The organization may contract with members to provide maintenance services to the organization. The area is open to the general public and access is not restricted to owners, occupants or residents.

Revenue for the organization is derived solely from assessments against the property owners in the area. Assessments are based on a point system assigned to each property. Expenses are for security and

maintenance of the common areas, which include the streets, sidewalks and plaza area owned by the organization.

Law

Section 501(c)(4) of the Code provides for the exemption from Federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare or legal associations of employees, the membership of which is limited to the employees of the designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational or recreational purposes.

Section 501(c)(4)(B) states that subparagraph a shall not apply to an entity unless no part of the net earnings of such entity inures to the benefit of any private shareholder or individual.

Section 1.501(c)(4)-1(a)(1) of the Income Tax Regulations states an organization may be exempt if: (i) it is not operated for profit and (ii) it is operated exclusively for the promoting of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one, which is operated primarily for the purpose of bringing about civic betterments and social improvements.

LAW AND ANALYSIS

Section 501(c)(4) of the Code provides for the exemption from federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the community.

In order to qualify as a social welfare organization, the organization must be operated primarily for the promotion of social welfare. Determination of an organization's eligibility for exemption as a social welfare organization is based not only on its stated purpose but also on its method for carrying out such purposes.

_____ initial purpose was to provide an entity for the furtherance of the interests of the owners within the properties. The organization amended its Articles of Incorporation after we pointed this out to them. Its amended purpose is to provide services to the benefit of the general public in its use of and free access to the area served by the organization. The activities to accomplish this purpose consist solely of providing maintenance services to the property that the organization owns and ultimately to its members. According to Revenue Ruling 54-394, 1954-2 C.B. 131, an organization was denied exemption since its only activity was to provide television reception on a cooperative basis to its members, who contracted and paid for such

services. It was held that the organization was operating for the benefit of its members rather than for the promotion of the welfare of mankind. [REDACTED] is like this organization because the members of the [REDACTED] pay assessment fees to maintain the common areas and in return the organization provides maintenance services. The organization may even contract with its members to provide such services. In addition, the provision in its liability insurance policy naming the [REDACTED] members as beneficiaries also reinforces the fact that the organization is operating for the benefit of its members rather than for the benefit of social welfare.

A related criterion of the social welfare organization is that it must not be operated primarily for the economic benefit or convenience of its members. Revenue ruling 73-706, 1973-2 C.B. 179 denied exemption to a nonprofit organization that was formed to represent member-tenants of an apartment complex in negotiations with landlords, in litigation, and before local and Federal regulatory agencies with respect to matters of mutual concern to the tenants. Exemption under section 501(c)(4) of the Code. It was found that the organization was not primarily engaged in activities for the common good and general welfare of the people, because the organization was promoting the common interests of the tenants. Likewise, the activities that [REDACTED] is conducting are not primarily for the general welfare of the people but for the convenience of its [REDACTED] members. The concept of social welfare implies a service or program directed at benefiting the community rather than a private group of individuals. Commissioner v. Lake Forest, Inc., 305 F. 2d 814 (4th Cir. 1962).

Tax Payer Position

[REDACTED] stated that it is like the organization described in Revenue Ruling 75-286, 1975-2 C.B. 210, which qualified for exemption under 501(c)(4). This organization's purpose was to preserve and beautify a city block, to improve all public facilities within the block and to prevent physical deterioration of the block. Its activities consisted of paying the city government to plant trees on public property within the block as well as organizing residents to pick up litter and refuse in the public streets and on public sidewalks within the block. The organization also encouraged residents to take an active part in beautifying the block. The organization's financial support came from block parties and voluntary contributions from members.

[REDACTED] also stated that it is like the organization described in Revenue Ruling 74-99, 1974-1 C.B. 131 and the organization described in Letter Ruling 8028010. These refer to homeowners associations, whose members are homeowners.

Our Position

[REDACTED] is not like the organization described in Revenue Ruling 75-286 because of the following reasons. [REDACTED] is improving private property. Its

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[REDACTED]
sources of financial support are assessments from members as opposed to voluntary contributions from members and revenue from block parties. [REDACTED] is contracting for services and may even contract with members to provide services while volunteers perform the services for the organization in Revenue Ruling 75-286.

[REDACTED] is also not like the organizations described in Revenue Ruling 74-99 and Letter Ruling 8028010. [REDACTED] is not a homeowner's association since it only consists of [REDACTED] businesses.

[REDACTED] is also not like the organizations described in Revenue Ruling 78-429, 1978-2 C.B. 178 and Revenue Ruling 67-109, 1967-1 C.B. 136. These organizations conducted social welfare activities on public property. In Revenue Ruling 78-429, 1978-2 C.B. 178, the organization operated an airport located on land owned by a municipality while the organization in Revenue Ruling 67-109, 1967-1 C.B. 136 operated a skating rink in a county owned building. In contrast, [REDACTED] is conducting its activities on private property.

Conclusion:

To determine its eligibility for exemption under 501(c)(4) of the code, we must consider if [REDACTED] qualifies as an organization operated exclusively for the benefit of social welfare. The facts that were submitted state that the [REDACTED] primary activity is providing maintenance services for its members. Accordingly, since the benefits from the activities are primarily for its members and there is only minor and incidental benefit to the community as a whole, the [REDACTED] does not qualify for exemption from federal income tax under section 501(c)(4) of the Code.

We have also considered the [REDACTED] for exemption under section 501(c)(6) of the code, which describes business leagues. Section 1.501(c)(6)-1 provides that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. Because [REDACTED] is providing services for its members, it does not qualify for exemption from federal income tax under section 501(c)(6) of the code.

Form 6018
(Rev. Aug. 1983)

Department of the Treasury - Internal Revenue Service
Consent to Proposed Adverse Action
(All references are to the Internal Revenue Code)

Case Number: [REDACTED]

Date of Latest Determination Letter

Employer Identification Number
[REDACTED]

Name and Address of Organization
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

I consent to the proposed adverse action relative to the above organization as shown below. I understand that if Section 7428, Declaratory Judgements Relating to Status and Classification of Organizations under Section 501(c)(3), etc., applies, I have the right to protest the proposed adverse action.

NATURE OF ADVERSE ACTION

☒ Denial of exemption

☐ Revocation of exemption, effective

☐ Modification of exemption from section 501(c)() to section 501(), effective

☐ Classification as a private foundation described in section 509(a), effective

☐ Classification as an private operating foundation described in sections 509(a) and 4942(j)(3), effective for

☐ Classification as an organization described in section 509(a)(), effective

☐ Classification as an organization described in section 170(b)(1)(A)(), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.

If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgement under section 7428.

(Signature instructions on Back)

Name of Organization:
[REDACTED]

Signature and Title

Date

Signature and Title

Date